SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 567

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

STATEMENT AS TO JURISDICTION

WALTER P. REILLY,
JAMES L. HANDFORD,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
State statute the validity of which is involved	3
Date of the judgment and application for appeal	5
Nature of the case and rulings below	5
Cases believed to sustain jurisdiction	14
Exhibit "A"—Per curiam opinion of the New Jersey Court of Errors and Appeals	15
Exhibit "B"—Opinion of October 26, 1937 of the New Jersey Court of Errors and Appeals	16
Exhibit "C"—Opinion of the New Jersey Court of Errors and Appeals in the case of *Rocker* v. *Cardinal Building & Loan Association of the City of Newark*	30

Table of Cases Cited.

Adams v. *Russell*, 229 U. S. 353	12
Americus Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 45 L. Ed. 102	14
Bucsi v. *Longworth Building and Loan Association*, 119 N. J. Law 120, 194 Atl. 857	10, 11
Detroit United Railway v. *Michigan*, 242 U. S. 238	13
Kansas City Southern Ry. Co. v. *Road Impt. Dist. No. 3*, 266 U. S. 379, 69 L. Ed. 335	14
Louisville & N. R. Co. v. *Melton*, 218 U. S. 36, 54 L. Ed. 921	14
Mulhern v. *Moffatt Tunnel Imp. District*, 262 U. S. 710, 67 L. Ed. 1194	14
Rocker v. *Cardinal Building & Loan Association*, 13 N. J. Mis. 411, 179 A. 674, 119 N. J. L. 134, 194 A. 865	10, 11
Treigle v. *Acme Homestead Association*, 297 U. S. 189, 56 Sup. Ct. Rep. 408, 80 L. Ed. 391	11, 14

STATUTES CITED.

Act of January 31, 1928 (45 Stat. 54), as amended by the Act of April 26, 1928 (45 Stat. 466) 2, 3, 12
Constitution of the United States, Article I, Section 10 ..... 2, 12
Constitution of the United States, Fourteenth Amendment, Section 1 ..... 2, 12
Judicial Code, Section 237(a) (28 U. S. C. A. 344) 2, 12
New Jersey Pamphlet Laws of 1925, Chap. 65, Section 49 6
New Jersey Pamphlet Laws of 1925, Chap. 65, Section 52, page 212 ..... 1, 3, 5, 8, 9, 10, 12
New Jersey Pamphlet Laws of 1932, Chap. 102, Section 1, page 175, approved April 22, 1932 ..... 1, 3, 8, 9, 10, 12
New Jersey Pamphlet Laws of 1935, Chapter 59, Section 11, page 153 ..... 1, 2, 3, 5, 8, 9, 10, 12
New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295 ..... 2, 3, 5, 8, 9, 10, 12
Revised Statutes of New Jersey, 1937, 17: 12-53, ... 1, 3, 8, 9, 10, 12
Rules of the Supreme Court of the United States, Rule 46, Par. 2 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 567

HARRY M. VEIX,

Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, A CORPORATION,

Appellee.

STATEMENT PURSUANT TO RULE 12 OF THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 12, paragraph 1 of the Rules of the Supreme Court of the United States, Harry M. Veix, for appeal herein files this statement showing the basis upon which he contends the Supreme Court of the United States has jurisdiction to review the judgment and decree of the New Jersey Court of Errors and Appeals herein.

This case is one in which the validity of a statute of the State of New Jersey, to wit, 1937 Revised Statutes of New Jersey 17: 12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52 page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chap-

ter 59 Section 11 page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118, Section 4, page 295, is drawn in question upon the ground that the statute is repugnant to Article I, Section 10 of the Constitution of the United States and also repugnant to Section 1 of the 14th Amendment to the Constitution of the United States. The final decision of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, the highest court of said State in which a decision in the above entitled cause could be had, is in favor of the validity of said statute. Therefore, in accordance with Rule 46, paragraph 2 of the Rules of the Supreme Court of the United States (28 U. S. C. A.) the appellant respectfully shows that this case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. 54), as amended by the Act of April 26, 1928 (45 Stat. 466), was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344), a review could be had in the Supreme Court of the United States on writ of error.

Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344).

> "Sec. 237 (a) A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the grounds of its being repugnant to the Constitution * * * of the United States and the decision is in favor of its validity may be reviewed by the Supreme Court upon a Writ of Error."

Act of January 31, 1928 (45 Stat. 54)

> "All relief which heretofore could be obtained by Writ of Error shall hereinafter be obtainable by appeal * * * the review of judgments of State Courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such Courts."

Act of April 26, 1928 (45 Stat. 466)

"Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandates shall be applicable to the appeal which the preceding section substitutes for a writ of error."

As stated above, the Statute of New Jersey, the validity of which is involved in this case is 1937 Revised Statutes of New Jersey 17: 12-53 *source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52 page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11 page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295, which Statute reads as follows:

"53. Payment of maturities and withdrawals. Maturities and withdrawals shall be paid in the manner and subject to the limitations provided herein.

a. Maturities shall be paid in the order in which they become due except as provided herein and withdrawals shall be paid in the order in which notices of withdrawals have been filed, except as provided herein; and

b. The maturities of any one month shall be paid before the maturities of subsequent months; and

c. One-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of maturities or for the establishing of maturity reserves and another one-third of the net receipts of any such association in each fiscal month shall be made available so far as necessary for the payment of withdrawals; and the words "net receipts," as used in this section, shall be construed to mean moneys, other than borrowed moneys, received by any such association less moneys used for operating

expenses, moneys used to pay creditor obligations, moneys used for the conservation, preservation or protection of the property and assets of such association, and moneys reserved for any of such purposes; and

d. If at the end of any fiscal month the funds of any such association required to be made available for the payment of withdrawals, together with such other funds, if any, made available for such purpose by the board of directors, shall be insufficient for the payment of all withdrawals then due and payable, the board of directors of such association shall so far as possible, pay out of such funds on account of the sum due to each member, who has filed notice or notices of withdrawal, without regard to the fact that such notices shall have been filed by such member on more than one share account, in the order in which such notices shall have been filed, the sum of fifty dollars, or the balance due to such member, whichever is less and, if the available funds shall not thereby be exhausted or become inadequate, shall, so far as possible again pay on account of the sum due to each such withdrawing member, in said order, the sum of fifty dollars or the balance due to such member, whichever is less, and shall repeat the process until the available funds shall become inadequate or exhausted; and subsequent available funds, when available, shall be applied to the payment of then existing withdrawal obligations in the same manner beginning with the withdrawal of the member next following the one on whose account the last such payment was made; and, in the event that such member shall have filed more than one notice of withdrawal, his place in the order of payment shall be as of the date and time of the first notice filed by him; and

e. No member to whom any such association shall be obligated for the payment of any maturity or withdrawal shall have the right to bring suit against such association to recover the maturity or withdrawal value of his shares or any part thereof so long as the funds

of such association shall be applied as required by this section; and

f. The board of directors of any such association shall have the right, in its discretion, to make available additional funds other than those required in paragraph "c" of this section for the payment of maturities and withdrawals; but no more than one-third of the net receipts as defined in said paragraph "c" shall be used for the payment of withdrawals while maturities remain unpaid. Borrowed moneys shall not be used for the payment of withdrawals while maturities remain unpaid. (17: 12-53)

Source L 1925, c. 65, Sec. 52 p. 212, as amended by L. 1932 c. 102, Sec. 1, page 175 L. 1935, c. 59 Sec. 11 p. 153, L. 1936 c. 118 Sec. 4, p. 295.

Judgment in this case was entered by the New Jersey Court of Errors and Appeals on September 22, 1939 and the petition for appeal which this statement accompanies is being presented on October 30th, 1939.

The facts, all of which were set forth in the complaint filed in the New Jersey Supreme Court, being the court of first instance in this cause, are as follows:

On October 1, 1928 appellant purchased twenty-five prepaid shares and on October 2, 1929 seventeen and one-half prepaid shares of the Sixth Ward Building and Loan Association of Newark, N. J. the appellee herein, of a par value of $200.00 each, for which the appellant paid the appellee the sum of $8500.00.

By the terms of the certificates issued to the appellant therefor, the appellee agreed to pay the appellant six (6) per cent per annum interest on the face value of said shares.

At the time the said shares were purchased as aforesaid the New Jersey Statute, Pamphlet Laws of New Jersey, 1925 Chapter 65, provided that the shares may be withdrawn at any time by giving such written notice as the con-

stitution or by-laws of the association provided, not to exceed thirty days and that in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any court of competent jurisdiction if the same is not paid in six months from the date of the giving of said notice of withdrawal.

The said statutes are as follows:

Pamphlet Laws of New Jersey 1925—Chapter 65, was then in force which provided among other things as follows:

Section 49 provides as follows:

"49. How Withdrawn.

The shares of every such association of this State, or doing business therein, may be withdrawn by the holder at any time, by giving such written notice as may be provided for in the constitution or by-laws not to exceed thirty days; if withdrawal be made within the first year, the withdrawal value of the shares withdrawn shall be not less than the sum of the subscription or dues paid on such shares less a proportionate share of any loss sustained by such association; after the first year a reasonable share of the profits less unpaid fines shall be included in the withdrawal value; in case such shares are pledged as collateral security for the repayment of a loan made thereon by such association, the amount of such loan shall be deducted from such withdrawal value and the difference only paid to such member; amounts paid for salaries, commissions and other current expenses shall not be considered losses within the meaning of this section."

Section 52 of the Act provides as follows:

"52. Payment of withdrawals.

Withdrawals from any such association shall be paid in the order in which the notices thereof shall have been received, but not more than one-half of the receipts of any one month shall be required to be used for the pay-

ment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then unpaid shall have been on file for a period of six months; but in no case shall payment be postponed for a period longer than six months from the date of such notice, and any member who has given the said notice may sue for and recover the withdrawal value of his shares in any such association in any court of competent jurisdiction, if the same is not paid in six months from the date of giving of said notice of withdrawal."

At the time said shares were purchased the constitution of the appellee Building and Loan Association provided for the withdrawal of prepaid certificates, with interest, upon giving thirty days written notice as follows:

ARTICLE XIX. Prepaid shares.

Section 2. Prepaid shares shall bear interest payable semi-annually on the First day of May and November of each year, at such rate as the Board of Directors may determine at date of issue and may be withdrawn by the holder thereof, upon giving thirty days written notice prior to any regular meeting of the Association.

On August 17, 1932 the appellant gave the appellee Building and Loan Association written notice of withdrawal of said shares, thirty days thereafter, six months thereafter and on many other occasions he demanded payment of the withdrawal value with interest, but payment was refused.

At the time such demands were made, the appellee Building and Loan Association had sufficient funds in cash on hand to pay the same.

At the time such demands were made the appellee Building and Loan Association was and still is solvent.

The complaint filed in the New Jersey Supreme Court, which was the court of first instance in the cause, alleges, as follows:

"11. The defendant claims to be operating under New Jersey Revised Statutes 17: 12-49 also 17: 12-50

Source L 1925 C. 65, Sec. 49, p. 211 as amended by L 1932, C 92 Section 1 p. 161 L. 1935, C 59 Section 10 p. 152. 17: 12-53 Source L 1925, C. 65, Section 52 p. 212, as amended by L 1932, C 102 Section 1 p. 175, L 1935 C 59 Section 11, p. 153, L 1936, C 118 Section 4 p. 295, but all of these statutes in so far as they might effect the plaintiff's right herein are unconstitutional and within the inhibitions of Article 4 Sec. 7 paragraph 3 of the Constitution of the State of New Jersey and of Article 1 Section 10, of the Constitution of the United States of America, and of Section 1 of the Fourteenth Amendment of the Constitution of the United States of America and therefore are void insofar as the plaintiff's rights are concerned.

12. There are no legal assessments, deductions or reserves which can or should be withheld from the plaintiff and any attempt on the part of the defendant to withhold any part of the plaintiff's money under alleged color thereof or under alleged color of any order of the Commissioner of Banking and Insurance of the State of New Jersey is done in violation of Articles 4, Section 7, Paragraph 3 of the constitution of the State of New Jersey and Article 1, Section 10 of the Constitution of the United States of America and Section 1 of the Fourteenth Amendment of the Constitution of the United States of America and is therefore void insofar as it may effect the right of the plaintiff herein."

The appellee association framed its answer setting up as a defense 1937 Revised Statutes of New Jersey 17: 12-53—*source* New Jersey Pamphlet Laws of 1925, Chapter 65, Section 52, page 212; New Jersey Pamphlet Laws of 1932, Chapter 102, Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935, Chapter 59, Section 11, page 153 and New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295.

The appellant moved to strike the answer on the ground that it failed to set up a defense and based his argument on the same contention that 1937 Revised Statutes of New Jer-

sey 17: 12-53—*source* New Jersey Pamphlet Laws of 1925, Chapter 65, Section 52, page 212; New Jersey Pamphlet Laws of 1932, Chapter 102, Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935, Chapter 59, Section 11, page 153 and New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295 was unconstitutional. The appellee urged that the said Act was constitutional and that the defense created by the act should bar the appellant's action. The trial court upheld the constitutionality of 1937 Revised Statutes of New Jersey 17: 12-53—*source* New Jersey Pamphlet Laws of 1925, Chapter 65, Section 52, page 212; New Jersey Pamphlet Laws of 1932, Chapter 102, Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59, Section 11, page 153 and New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295, and following the common law rule on demurrers struck the complaint as the first pleading defective thereunder. The only question raised or argued by either party in the courts below was the constitutionality of said 1937 Revised Statutes of New Jersey 17: 12-53—*source* New Jersey Pamphlet Laws of 1925, Chapter 65, Section 52, page 212; New Jersey Pamphlet Laws of 1932, Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935, Chapter 59, Section 11, page 153 and New Jersey Pamphlet Laws of 1936, Chapter 118, Section 4, page 295.

The Federal questions here sought to be reviewed were raised and argued in both of the Tribunals of the State of New Jersey passing upon the case. The question was presented in the first instance to the Circuit Court Judge of the State of New Jersey sitting as Supreme Court Commissioner in the New Jersey Supreme Court. The judgment from which the appeal was taken was entered on an oral motion to strike the complaint as failing to set up a cause of action under 1937 Revised Statutes of New Jersey

17:12-53—*source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52 page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11 page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295.

On appeal to the New Jersey Court of Errors and Appeals these same points were argued, and the New Jersey Court of Errors and Appeals passed squarely on the constitutional question presented relying on the cases of *Bucsi* v. *Longworth Building and Loan Association,* a corporation, 119 N. J. Law 120, 194 Atl. 857 and *Rocker* v. *Cardinal Building & Loan Association,* 13 N. J. Mis. 411, 179 A. 674, affirmed by the Court of Errors and Appeals, 119 N. J. L. 134, 194 A. 865. The New Jersey Court of Errors and Appeals sustained the constitutionality of 1937 Revised Statutes of New Jersey 17:12-53 *source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52 page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11 page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4 page 295, as follows:

> "The plaintiff-appellant says that the 1932 statute is invalid and the burden of the argument is that that statute is unconstitutional because it impairs the obligation of the contract, but we have already held to the contrary in the case of Bucsi *v.* Longworth Building and Loan Association 119 N. J. L. 120 and Rocker *v.* Cardinal B. & L. Association, 119 Id. 134, and this appeal is entirely controlled by our holding in those cases."

The opinion is not yet officially reported but will be found in 8 Atlantic Reporter 2nd Series, page 350 and a copy of same is hereto attached.

A copy of the opinion in the case of *Bucsi* v. *Longworth Building and Loan Association* is reported in 119 N. J. L. 120, 194 Atlantic 857 and of the opinion in *Rocker* v. *Cardinal B. & L. Association,* 119 Id. 134 also is attached hereto.

Grounds of appeal before the Court of Errors and Appeals squarely raised the constitutional questions as follows:

1. Because the Supreme Court erred in striking the complaint and entering judgment in favor of the defendant in that:

A. The Revised Statutes of New Jersey 17: 12-49 also 17: 12-50 and 17: 12-53, also L 1933 C. 48, and the amendments and supplements thereto are unconstitutional and within the inhibitions of Article 4, Sec. 7 paragraph 3 of the Constitution of the State of New Jersey and Article 1, Section 10 of the Constitution of the United States of America, and Section 1 of the Fourteenth Amendment of the Constitution of the United States of America and therefore void insofar as the plaintiff's rights are concerned.

B. Because the Supreme Court erred in failing and refusing to strike the Answer.

C. Because the Supreme Court erred in failing and refusing to enter a summary judgment in favor of the plaintiff.

The constitutional questions were argued before the Court of Errors and Appeals as well as before the Supreme Court.

The Supreme Court of the United States on February 3, 1936, decided the case of *Treigle* v. *Acme Homestead Association* as Case #287, October Term, 1935. The unanimous opinion of the court was delivered by Mr. Justice Roberts and is reported in 297 U. S. 189, 56 Supreme Court Reports, 408, 80 L. Ed. 391. In this decision the Supreme

Court of the United States held a comparable statute of Louisiana unconstitutional as impairing the obligation of contracts and destroying vested rights in contravention of Article 1, Section 10, and Amendment XIV Section 1 of the Constitution.

On the basis of the foregoing history of the case, it is submitted that at every step the validity of the New Jersey Statute, 1937 Revised Statutes of New Jersey 17: 12-53 *source* New Jersey Pamphlet Laws of 1925 Chapter 65 Section 52 page 212; New Jersey Pamphlet Laws of 1932 Chapter 102 Section 1, page 175; approved April 22, 1932, New Jersey Pamphlet Laws of 1935 Chapter 59 Section 11 page 153 and New Jersey Pamphlet Laws of 1936 Chapter 118 Section 4, page 295, was called in question on the ground of its being repugnant to the Constitution of the United States and the decision being in favor of the statute's validity, an appeal should be allowed under Section 237 (a) of the Judicial Code (28 U. S. C. A. 344), as modified by the Act of January 31, 1928, (45 Stat. 54) and the amendment of April 26, 1928 (45 Stat. 456). The Federal questions were presented for decision and their decision was necessary to the determination of the cause. Although the order of the New Jersey Supreme Court striking the complaint does not expressly state that the Federal questions were actually decided, the complaint which was stricken squarely raises them, the Federal questions were argued, and the judgment as rendered could not have been rendered without deciding the Federal questions presented. *Adams* v. *Russell*, 229 U. S. 353, 360.

Moreover, the Court of Errors and Appeals decided this case at bar solely on the constitutional grounds and in its decision in *Bucsi* v. *Longworth Building and Loan Association* expressly refers to Article 1, Section 10 of the Constitution of the United States and the 14th Amendment, Section 1, thereof.

It is further submitted that the questions involved are substantial. When the United States Supreme Court is called upon to decide whether State legislation impairs the obligation of a contract, the questions are:

1. Was there a contract?

2. If so, what obligation arose from it?

3. Has that obligation been impaired by subsequent legislation?

Detroit United Railway v. *Michigan* 242 U. S. 238, 249.

Under the decision of the United States Supreme Court in the case of *Treigle* v. *Acme Homestead Association* (*supra*) when compared with opinion of the New Jersey Court of Errors and Appeals in the instant case and in the case of *Bucsi* v. *Longworth Building and Loan Association* (*supra*), there seems to be no room for argument as to the answers to these queries. There was a definite contract between appellant and the appellees, the terms of which were clearly defined by the previous statutes. It was granted by the New Jersey Courts that the obligation of this contract was impaired but they said the impairment was justified under the police power. The New Jersey courts held, as did the Supreme Court of Louisiana in the *Treigle* case, that the statute was passed for an end, which was in fact public. However, as was pointed out in the next to the last paragraph of the opinion of the United States Supreme Court in the *Treigle* case, the questioned section deals only with private rights and deprives withdrawing members of solvent associations of existing contract rights for the benefit of those who remain. It impairs the obligation of appellant's contracts and arbitrarily deprives him of vested property rights without due process of law. The appellant contends that the statute in question cannot be

distinguished from the Louisiana statute which was held unconstitutional in the *Treigle* case and cannot be upheld under the police power. This is a substantial question, particularly in view of the fact that this is not an emergency act having only temporary application, but becomes a permanent part of the New Jersey statutory law, drastically affecting appellant's contracts and his vested property rights.

The following are cases believed to sustain the jurisdiction:

Treigle v. *Acme Homestead Assn.*, 297 U. S. 189, 56 Sup. Court Rep. 408, 80 L. Ed. 391;

Americus Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 45 L. Ed. 102;

Kansas City Southern Ry. Co. v. *Road Impt. Dist. No. 3*, 266 U. S. 379, 69 L. Ed. 335;

Louisville & N. R. Co. v. *Melton*, 218 U. S. 36, 54 L. Ed. 921;

Mulhern v. *Moffatt Tunnel Imp. District*, 262 U. S. 710, 67 L. Ed. 1194.

We respectfully submit that this Court has jurisdiction of this appeal.

Respectfully submitted.

WALTER P. REILLY,
Attorney for Appellant.

WALTER P. REILLY,
Counsel for Appellant.
JAMES L. HANDFORD,
Counsel for Appellant.

EXHIBIT A

NEW JERSEY COURT OF ERRORS & APPEALS No. 73, MAY TERM, 1939.

HARRY M. VEIX, Plaintiff-Appellant,

vs.

SIXTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY, a Corporation, Defendant-Respondent

Submitted May Term, 1939; decided Sep. 22, 1939.

On Appeal from the Supreme Court.

For the plaintiff-appellant, Walter P. Reilly. James L. Handford, of Counsel.

For the defendant-respondent Mulligan & Koenig.

Per CURIAM.

The complaint in the instant case was struck out on defendant's motion and from the judgment entered thereon the plaintiff appeals.

In this suit at law the plaintiff sought to recover the face value and interest of twenty-five prepaid shares of the defendant building and loan association stock purchased on Oct. 1, 1928, and also the face value and interest of an additional seventeen and one-half shares of like stock purchased a year later.

Plaintiff's case is rested on the provisions of the statute which was controlling at the time of the purchase—Chapter 65, P. L. 1925; R. S. 17: 12-2, et seq. At that time the 1925 statute, supra, provided, inter alia, that the owner of such stock might have same redeemed for cash by giving a thirty day notice in writing and that such withdrawal should be paid by the association in the order in which notice has been received. On August 17, 1932, the plaintiff gave the defendant such written notice of withdrawal and, after the lapse of thirty days, demanded payment. But prior thereto the Legislature had amended the 1925 statute by Chapter 102, P. L. 1932; R. S. 17: 12-53.

The plaintiff-appellant says that the 1932 statute is invalid and the burden of the argument is that that statute

is unconsitutional because it impairs the obligation of the contract, but we have already held to the contrary in the case of Bucsi *v.* Longworth B. & L. Assn., 119 N. J. L. 120, and Rocker *v.* Cardinal B. & L. Assn., 119 Id. 134, and this appeal is entirely controlled by our holding in those cases.

The judgment under review will be affirmed.

Endorsed: "Filed Sep. 22, 1939. Thomas A. Mathis, Clerk."

EXHIBIT B

New Jersey Court of Errors and Appeals. May Term, 1935.

No. 57.

Rose Bucsi, Plaintiff-Appellant,

vs.

Longworth Building & Loan Association, Defendant-Respondent.

Submitted May Term, 1935, re-argued as No. 1, May Term, 1936. Decided October 26, 1937.

Syllabus.

1. P. L. 1932, Chap. 102, cannot strictly be classed as emergency legislation because it is not limited in its existence to the period of any emergency but forms a permanent part of the statutes, relating to and regulating building and Loan Associations.

2. This court takes judicial notice of what was common knowledge at the time of the adoption of said legislation, namely, that a great emergency existed respecting the financial affairs of building and loan associations throughout the State, which was of great public interest adversely affecting, directly and indirectly the financial affairs of all the people.

3. When such a situation exists it calls for the exercise by the legislature of the reserved or police power of the State to adopt correcting and relieving legislation, even

though contracts previously entered into may thereby be affected.

4. It is well settled that the constitutional interdiction against statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, but the exercise of such powers is subject to the limitation that it must be reasonable under the conditions and the legislation must have a substantial relation to its object and must not be arbitrary or discriminatory.

5. P. L. 1932, Chap. 102, is a constitutional legislative enactment.

Appeal from Supreme Court, Essex County Circuit.

For plaintiff-appellant: John A. Bolger.

For defendant-respondent: John Warren, David J. Wilentz, Attorney General, Amicus Curiae; Louis J. Cohen, Assistant Attorney General, of counsel.

The opinion of the court was delivered by the Chancellor.

An action was brought for the purpose of recovering the withdrawal value of ten installment shares of the stock held by the plaintiff-appellant in the Niagara Building and Loan Association, which on December 31, 1932, was consolidated and merged with the Longworth Building and Loan Association, the defendant-respondent. This stock was subscribed for June 17, 1919. Written notice of withdrawal was given on June 15, 1931, and on subsequent dates prior to October 15, 1931, and the action in question was commenced January 19, 1934. In her complaint the appellant rested her right on action upon the ground that she was entitled to payment according to the terms and provisions of the statute existing at the time she subscribed for the shares in question. This was P. L. 1903 p. 457. The statute in effect at the time she gave notice of her withdrawal was P. L. 1925, Chap. 65. The terms and provisions of both of these statutes, as to the question of withdrawal, are, to all intents and purposes, alike.

Between the date of giving her notice of withdrawal and the commencement of her suit P. L. 1932, Chap. 102, and P. L. 1933, Chaps. 48, 166 and 258 had been adopted and become effective. P. L. 1932, Chap. 102 became effective April 22, 1932, and P. L. 1933, Chaps. 48, 166 and 258 became effective March 10, 1933, May 11, 1933 and June 21, 1933, respectively.

The appellant appears to contend that whether the act of 1903 or 1925, supra, controlled, she was entitled to have her action December 15, 1931.

In its answer the defendant-respondent pleaded, among other things, all of these statutes and certain orders of the Commissioner of Banking and Insurance issued pursuant to the 1933 acts, and reserved the right to move to strike the complaint as not setting up a cause of action. Plaintiff-appellant moved to strike the answer and upon the coming on of the hearing of such motion before the Circuit Court judge, sitting under the statute, as a Supreme Court Commissioner, the defendant-respondent moved to strike the complaint and prevailed and from the judgment entered the plaintiff below appeals and urges and argues four grounds for reversal:

1. That P. L. 1932, Chap. 102 is not retrospective.

2. That P. L. 1932, Chap. 102, if not retrospective is unconstitutional.

3. That P. L. 1932, Chap. 102 is not an emergency act.

4. That orders issued by the Commissioner of Banking and Insurance issued under P. L. 1933 Chap. 48, 166 and 258 are invalid and without effect and the statutes are unconstitutional as being an improper delegation of legislative powers.

Counsel for appellant concedes in his brief that if P. L. 1932 Chap. 102, supra, or the orders of the Commissioner of Banking and Insurance issued under the 1933 statutes, supra, are controlling, then appellant's complaint failed to state a cause of action.

The first three points urged for reversal can, most conveniently, be considered together.

First it is urged that the 1932 act is not emergency legislation because it does not recite the existence of an emergency and is not limited in its existence to the period of any emergency but forms a permanent part of the statutes relating to and regulating building and loan associations. This, in the cause before us, is not necessary. A legislative declaration of the existence of an emergency is entitled to judicial consideration but the courts must be guided by what is common knowledge. Home Building and Loan Association v. Blaisdell, 290 U. S. 398, 54 Sup. Ct. Rep. 231, 78 L. Ed. 413.

Further, an emergency does not create or bestow legislative power, not otherwise constitutional existing, but it may furnish the occasion and necessity for the exercise of such power. Home Building and Loan Association v. Blaisdell, supra; People v. Title Mortgage and Guaranty Co. 264 N. Y. 69, 190 N. E. 153, 156; Hourigan v. North Bergen, 113 N. J. L. 143, 151.

It must be noted that this statute does not, by its terms, limit its operation to the period of an existing emergency and this reason takes it out of the class of mere emergency legislation—so called. But it is unnecessary to sustain the statute on the temporary ground that it is an emergency statute, because it is sustainable on broad constitutional grounds, as a valid exercise of the reserved power of the State. This so-called reserved power is generally referred to as the police power of the State and extends to all great public needs. Noble State Bank v. Haskell 219 U. S. 104, 110; 55 L. Ed. 112; 31 Sup. Ct. Rep. 486. What are the police powers of the State?

Mr. Justice Taney, in The License Cases 5 Howard 504, 583; 12 L. Ed. 256, 291, said:

"They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a state passes a quarantine law, or a law to punish offenses, or establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits

of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the Constitution of the United States."

Nebbia v. New York, 291 U. S. 502, 524, 78 L. Ed. 940; 54 Sup. Ct. Rep. 505.

It is well settled, however, that the constitutional interdiction against statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into may thereby be affected. Home Building and Loan Association v. Blaisdell, supra, p. 437; Manigault v. Springs, 199 U. S. 473; 50 L. Ed. 274; 26 Sup. Ct. Rep. 127. But the exercise of such powers is subject to the limitation that it must be reasonable under the conditions and the legislation must have a substantial relation to its object and must not be arbitrary or discriminatory. Wolf Packing Co. v. Court of Industrial Relations 262 U. S. 522, 535; 43 Sup. Ct. Rep. 630, 67 L. Ed. 1103; Nebbia v. New York 291 U. S. 502, p. 535; 54 Sup. Ct. Rep. 505; 78 L. Ed. 940.

This power is an attribute of sovereignty and all contracts are subject to its future exercise, and not only existing laws but also laws resulting from the exercise of this reserved power are read into and made a part of all contracts. Home Building and Loan Association v. Blaisdell, supra; Norma v. Baltimore and Ohio Railroad Co. et als. 294 U. S. 240; 70 L. Ed. 885; 55 Sup. Ct. Rep. 407; Houriran v. North Bergen, supra; People v. Title Mortgage and Guaranty Co. supra.

It is a matter of such common knowledge as to require judicial notice that the operation of building and loan associations in this State during the latter part of the last century had been so loose and utterly devoid of any consideration of the purpose of which they were created and the rights of the subscribing members that the situation was a public scandal and called for action on the part of

our legislature. The legislature of 1903 undertook their regulation, P. L. 1903, p. 457. The need of regulation in the public interest was obvious and the statute was enacted for the protection of the public savings under the inherent police power of the State.

An examination of the statute clearly evidences the intention of that legislature to strictly regulate the business of these associations and the statute contemplated throughout its provisions the central ideal of cooperation, equality and mutuality upon the part of the members of the association. Fitzgerald v. State Mutual Building and Loan Assn. 76 N. J. Eq. 137, 143.

Prior to the enactment of this statute the remedy of a withdrawing member for non-payment was not at law. Campbell v. Perth Amboy Mutual Loan, etc. Assn. (1901) 67 N. J. L. 71. Section 39 of the statute provided:

"Withdrawals shall be paid in the order in which the notices thereof are received, but not more than one-half the receipts of any one month shall be required to be used for payment of withdrawal claims, without the consent of the board of directors, until the oldest of such claims then unpaid shall have been on file for a period of six months; but in no case shall payment be postponed for a longer period than six months from the date of such notice, and any shareholder who has given the said notice may sue for and recover the withdrawal value of his shares in any such association in any court of competent jurisdiction, if the same is not paid in six months from the date of the giving of said notice of withdrawal."

But the statutory right of a member to withdraw from membership and to receive the withdrawal value of his shares and the statutory privilege to sue for the amount if not paid within the time named in the statute, is based upon and forms a part of the general plan that each member is entitled to equal participation in the assets, and the statute does not contemplate that the privileges named shall be exercised to defeat equal participation, but that the spirit of the statute being equal participation, the paramount equity is equal participation at all times. Fitzgerald v. State Mutual Building and Loan Assn. supra. p. 145.

As pointed out, the statute in force, when the appellant subscribed for her stock was P. L. 1925, Chap. 65, Sec. 52, p. 212 (Revision of 1925). This was practically identical with P. L. 1903 Chap. 218, Sec. 39, p. 471 (1 C. S. 347). The statute provides that withdrawals may be made at any time upon written notice required by the constitution of the association but not exceeding thirty (30) days: the withdrawals to be paid in the order received, but not more than one-half the receipts of any one month shall be used without the consent of the board of directors until the oldest unpaid claim shall have been on file six months; and, in no case is payment to be postponed beyond six months from date of notice and if so the holder may sue for and recover the withdrawal value of his shares.

P. L. 1925, Chap. 65, Sec. 52, p. 212, was amended by the statute in question P. L. 1932, Chap. 102, Sec. 52, p. 175. This now provides that withdrawals shall be paid in the order of notice, but not more than one-half of the receipts of any one month, from the funds received as income on investments authorized by Sec. 26 of the statute shall be required to be so used except as approved by the board of directors. It is to be noted that, for the first time, the term "receipts" is defined by statute. The statute further provides, however, that if in any month the above funds, plus any others made available by the directors, is not sufficient to pay all the withdrawals the right of priority of payment shall be only to the extent of $500 and if all withdrawing members have been paid in full to the extent of $500 and there is still a balance available, then the order of priority to the extent of $500.00 shall continue to apply until the funds are exhausted; and no withdrawals shall be paid if there are not funds sufficient to pay the matured shares on which payment has been requested thirty days after maturity. Under the statute, holders of such matured shares are given a priority over withdrawing shareholders. The statute denies a withdrawing shareholder the right to sue if the funds are applied as above stated.

The foregoing indicates that a radical change has been effected in the rights and privileges of withdrawing shareholders. The prospective effect of the statute is not challenged and rightfully not, but the appellant contends that

if the statute is construed to have a retrospective effect it will affect her rights under P. L. 1925, Chapter 65, Sec. 52, p. 212, which rights have vested, and such impairment of these rights is prohibited by Article 1, Section 10, of the Constitution of the United States, and the XIV Amendment, Section 1 thereof, and Article IV Section 7, paragraph 3, of the Constitution of the State of New Jersey.

In a case involving a somewhat similar statute, Triegle v. Acme Homestead Asso. 297 U. S. 189, 197; 80 L. Ed. 575; 56 Sup. Ct. Rep. 408 Mr. Justice Roberts said:

> "Though the obligations of contracts must yield to a proper exercise of the police power, Home Building and Loan Ass. v. Blaisdell, 290 U. S. 398; 78 L. Ed. 415; 54 Sup. Ct. Rep. 531, and vested rights cannot inhibit the proper exercise of police power, Nebbia v. New York 291 U. S. 502 78 L. Ed. 940; 54 Sup. Ct. Rep. 505, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive.
>
> "As we have pointed out, the questioned sections deal only with private rights and are adapted to the legitimate end of conserving or equitably administering the assets in the interest of all the members. They deprive withdrawing members of a solvent association of existing contract rights for the benefit of those who remain. We hold the challenged provisions impair the obligation of the appellant's contract and arbitrarily deprives him of vested property rights without due process of law."

It may very well be that the statute in Louisiana was not passed "for an end which is in fact public", but the situation which faced our legislature in 1932, if allowed to run unregulated to its apparent and ultimate economic conclusion, would have affected adversely every person in this State.

It is a matter of common knowledge that a large percentage of all persons in this State over the age of twenty-one are members of building and loan associations and that as-

sets and holdings of building and loan associations approximate, if they do not exceed one billion dollars ($1,000,000,000).

This court must judicially notice the fact that investments of building and loan associations are regulated by statute and confined to classes of investment which are also by statute legal investments for banks, trust companies, insurance companies and trustees, particularly first mortgages on real estate located in New Jersey. The court also judicially notices the fact that the associations have foreclosed thousands of these mortgages and bought in the property at the public sale, and that the value of these mortgages runs into hundreds of millions of dollars. The Court also judicially notices the enactment by the Congress of the United States of the Home Owners Loan Act on June 13, 1933, Chap. 64, Art. 1, 48 Stat. 128, Title 12, Sec. 1463, U. S. C. A. and it is also common knowledge that thousands of mortgagors who were in default to the associations availed themselves of the benefit of this statute.

When the legislature in 1903 gave to withdrawing shareholders the unqualified privilege of suit it did not foresee the economic collapse through which this country has labored for the last eight years, with the consequent credit stringency, loss of employment, and collapse of price levels. It is unnecessary to cite official satatistics to establish what is common knowledge throughout the length and breadth of the land. West Coast Hotel Company v. Parrish, — U. S. —; 81 L. Ed. 455, 463. In the face of this financial stringency the number of withdrawals filed by shareholders of associations accelerated at a very rapid rate. It cannot be assumed that they were an exception to what was generally happening in all savings institutions.

The liabilities of building and loan associations to other than shareholders ordinarily amounts to but a negligible percentage of its assets, Cf. Feist v. Guarantee Building & Loan Asso., 118 N. J. L. 144. Hence under the economic conditions existing in 1932, by exercising the unfettered privilege of withdrawal and the concomitant right of suit a rapidly increasing number of withdrawing shareholders created a condition of potential insolvency in all the building and loan associations of this State.

If the right of withdrawal was not regulated and all notices of withdrawals were reduced to judgment, these judgment liabilities, coupled with the fact that by foreclosing mortgages the building and loan associations had acquired title to thousands of unsalable properties in this State, the inevitable result would have been that most of the building and loan associations would eventually become insolvent under Section 65 of the Corporation Act, if we are to consider insolvency to consist of their inability to pay the rapidly gathering withdrawal demands without thereby impairing the assets available to others with like rights.

The legislatures of 1903 and 1925 were neither omniscient or prescient and events proved to the legislature of 1932 that the unfettered privilege of suit granted to withdrawing members compelled these associations to accede to the prior demands of those who made an early request for withdrawals which would completely undo the major purposes for which they were created. The 1932 legislature faced the unenviable choice of permitting conditions to continue as they were with the inevitable result being the actual insolvency of most, if not all, of the associations, or it could regulate the rights of a withdrawing shareholder in a manner consonant with mutuality. It chose the latter and enacted the statute in question, P. L. 1932, Chap. 102.

The actual insolvency of these mutual corporations would have been fraught with a grave public danger. Our insolvency statute, Sec. 65 of the Corporation Act is essentially bankrupt in character, Block vs. Bell Furniture Co. 111 N. J. Eq. 551, 561, and the object of the proceedings under the act is to distribute the estate of the debtor corporation, Stockton v. Mechanics and Laborers Savings Bank, 32 N. J. Eq. 163, 168, 169, and the matured creditors have right to payment at once, Usher vs. Sarco Co. &c. 100 N. J. Eq. 428, 431. Building and Loan Associations are subject to the provisions of the Corporation Act, Sec. 4, by the Building and Loan Act of 1903, as amended and revised, 1 Cum. Supp. to C. S. p. 223; Supp. to C. S. p. 135; P. L. 1932, p. 171. If any great number of them became insolvent, ruinous liquidation necessarily would follow because withdrawing members would be entitled to be paid at once out of the assets of such insolvent associations.

Mere contemplation of such a situation forces the conclusion that there was a tremendous and grave public interest involved. As long as the privilege of suit was unabridged potential insolvency was present as to many and actual insolvency of most necessarily would follow as a matter of course.

The liquidation of the assets of these associations having a value of approximately one billion dollars would have destroyed the stability of and the market for first mortgages on real estate and other types of investments that are prescribed as legal investments by statute for banks, trust companies, insurance companies and other institutions and fiduciaries and to which classes of legal investments the funds of building and loan associations are restricted by law.

The value of real property and real estate mortgages was largely gone for the time being and liquidation could only be had on ruinous terms, but these values were susceptible of ultimate return. The result would be chaos and even under orderly liquidation of this vast amount of assets the ultimate return of these values would be indefinitely postponed if not irreparably impaired. The State has an important interest in the maintenance of real estate values because these values form the major base upon which its tax structure and its various political subdivisions rests. The stability of the tax base over a term of years is vitally important to the State.

The structure of the tax base and the widespread membership in building and loan associations and the fact that the value of the real estate mortgages and real property owned by such associations represents a high percentage of the total value of all taxable real estate in the State, creates a situation which is peculiar to this State. It does not appear from the record or briefs in Treigle v. Acme Homestead Asso. supra, that a comparable situation exists in Louisiana.

Assuming that the appellant has a vested right of contract, the obligations on contract must yield to a proper exercise of the police power of the State and vested rights cannot inhibit the proper exercise of the power, Home Building and Loan Asso. v. Blaisdell, supra. In Nebbia v. New York, supra, at p. 523, Mr. Justice Roberts said:

"Under our form of government the use of property and the making of contracts are normally matters of private concern. The general rule is that both shall be free from governmental interference. But neither property rights or contract rights are absolute; for government cannot exist if the citizen may at his will, use his property right to the detriment of his fellows or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it."

This should be equally true of a contract right which derives its vitality from a statute regulating a business affected with a public interest. This State has strictly regulated building and loan associations under a well defined public policy and the State has a right so to do. Hopkins Federal Savings and Loan Asso. v. Cleary, 296 U. S. 315, 80 L. Ed. 251, 56 Sup. Ct. Rep. 235. The privilege of suit was granted to withdrawing members by the regulatory statutes of this State and it must be assumed that the legislature intended in granting the privilege of suit to withdrawing members that such a grant would be effective in carrying out the public interest affected upon which the regulation of the building and loan associations was predicated.

Experience has demonstrated that adverse economic conditions give the privilege of suit by a withdrawing member a legal force under our insolvency statutes which is absolutely destructive since the unrestricted exercise of the privilege of suit by such members was a motivating and inexorable force that eventually would have forced these associations into insolvency, forced the liquidation of their assets, with the resultant adverse effect upon vital public interests heretofore pointed out.

If such a situation had resulted from the acts of a group of citizens or corporations in the use of their property or their right of contract, can it be questioned that the legislature under the police power could disturb their vested rights of contract by a regulatory statute? That right asserted by the appellant was granted by the legislature under a statutory enactment of previous legislatures, pursuant to the police power of the State, gives the right to no greater

sanctity. The fact is that unlimited use of the right is destructive of vital public interests.

The constitutional prohibition against the impairment of the obligation of contracts does not make it impossible for the State, in the exercise of its essential reserved power to protect the vital interests of all its people. The exercise of that reserved power has been repeatedly sustained against a literalism of the contract clause which would make it destructive of the public interests by depriving the State of its prerogative of self-protection. W. B. Worthen *v.* Thomas, 292 U. S. 426, 433; 78 L. Ed. 1344, 1347, 54 Sup. Ct. Rep. 816.

Nothing that has been said here should conflict with the holdings in Vanderbilt *v.* Brunton Piano Co., 111 N. J. L. 596, and Home Building and Loan Assn. *v.* Blaisdell supra. The subject matter of the contracts in those cases was not per se affected with a public interest. The statutes there in question had effect only upon the interests of the respective contracting parties since the contracts affected thereby were of themselves only capable of a legal or economic force which was coterminous with the limits of the contract.

The contract of the appellant, obviously, is not in this classification. The contract was congenitally affected with a public interest and the contract carries with it the infirmity of the subject matter. Rights which are subject to state restriction cannot be removed from the power of the State, Union Dry Goods Co. *v.* Georgia Public Service Corp. 248 U. S. 372, 63 L. Ed. 309; 39 Sup. Ct. Rep. 117, by the contract of the parties, nor can one legislature inhibit this power of the State to regulate or abridge the use of such contract rights when such use is destructive of vital public interests. P. L. 1932, Chap. 102, p. 175, was enacted "for an end that was in fact public"—to prevent the actual insolvency of the building and loan associations and the resultant and disastrous effects of the liquidation of most of them upon the value of all real property in the State, and the savings of a large proportion of the citizens of the State. The abridgement of the use of the privilege of suit of withdrawing members was reasonably adapted to the accomplishment of that purpose. The only alternative was to permit the withdrawing members to sue and proceed to judg-

ment under their statutory privilege, and that they would have done so, in sufficient numbers and amounts, to force most of the associations into insolvency is a situation that this court will judicially notice. The lack of confidence by the public in savings institutions of all kinds during that period permeated every section of this State and the country as a whole. It is likewise true in any period of economic depression. Without such abridgement of the privilege of suit of withdrawing members all other steps might have been inefficacious to meet the threat to vital public interests under similar economic conditions. Whether the situation created in the building and loan associations in this State by the economic depression is a temporary situation which will abate until the next economic depression is a question this court, at this time must frankly confess it cannot answer.

For these reasons it is concluded that P. L. 1932 Chap. 102 p. 175, is a valid exercise of the police power of the State for an end that is in fact public. The means adopted are reasonably adapted to the accomplishment of that end and are not arbitrary or oppressive but consonant with a vital public need, the purpose of the regulation of building and loan associations of this State, and the protection and conservation of their assets and the investments of the public therein.

The appellant argues that the statute also provides for a preference to holders of matured shares over withdrawing shareholders. The statute gives a priority to a matured shareholder but it only recognizes a preference which the matured shareholder had as a creditor. This court held in Cunningham *v.* Mutual B. & L. Asso., 72 N. J. L. 175, 180, that when the maturity of shares has been declared in the manner prescribed by the scheme of the constitution of the association, and that it had been recognized by the association by its officers that thereafter a holder of the matured shares became a creditor of the association, entitled to receive the money, provided the funds arising from the appropriation of one-half the receipts of the association should be sufficient for such payment.

The statute works no apparent change in the status of a matured shareholder and the preference necessarily only

applies to shareholders whose shares have been matured in the prescribed manner and who have filed the statutory notice prior to the notice of withdrawal. It leaves the status of the parties unchanged.

This results in the conclusion that the appellant's complaint did not state a cause of action and we are not concerned with the objections lodged against P. L. 1933, Chap. 48, 166 and 258.

The judgment under review is affirmed with costs.

Endorsed: "Filed Oct. 26, 1937. Thomas A. Mathis, Clerk."

EXHIBIT C

NEW JERSEY COURT OF ERRORS AND APPEALS.

Nos. 139, 143. October 26, 1937. 194 Atl. 865.

IDA ROCKER, Appellant,

vs.

CARDINAL BUILDING & LOAN ASSOCIATION OF THE CITY OF NEWARK, Appellee.

Appeal from Supreme Court.

John J. Stamler, for appellant.

Harold Simandl of Newark and John Warren of Jersey City, (Louis J. Cohen, Asst. Atty. Gen. of Counsel), for respondent.

PER CURIAM.

These appeals are in all respects identical with that of Busci *v.* Longworth Building and Loan Association (N. J. Err. & App.), 194 A. 857, decided October 26, 1937 except that in the former the action was to recover the withdrawal value of installment shares, and in the latter the principal and interest of paid-up shares. This is of no consequence. P. L. 1925 c. 65, Sec. 74, pp. 223, 224. (Comp. St. Supp. 1930, Sec. 27-R (74), under the title of "Status of shares," provides inter alia "and all members shall occupy the same relative status as to debts and losses of such association"

and "no agreement or understanding shall be made or entered into whereby the time for surrendering paidup shares to such association and withdrawing the value thereof shall be postponed, and paid up shares shall only be surrendered and withdrawn on the same terms and under the same conditions as provided in the constitution for the surrender and withdrawal of installment shares."

The judgment under review will be affirmed, with costs.

(Filed Nov. 3, 1939.)

(5009)